IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1064 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANDYA KUMUDCHANDRA KESHAVLAL

Versus

UMRETH MUNICIPALITY

Appearance:

1. Special Civil Application No. 1064 of 2001

MR YATIN SONI for Petitioner No. 1

MR BS PATEL for Respondent No. 1

MRS RANJAN B PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 11/08/2004

ORAL JUDGEMENT

1.0 The petitioner herein has prayed for directing the respondent Municipality for treating the petitioner as a regular / permanent employee and to give him the benefits as a regular / permanent employee from 10/12/1985, in view of the judgment of the Labour Court dated 13/10/1992 passed in Reference No.60/1992 (Old No.

being 151/1984) and confirmed by this Court in Special Civil Application No.643 of 1993 by order dated 08/03/2000.

2.0 The petitioner was appointed as a Pump Operator by the respondent Municipality w.e.f. 08/09/1982 and his services came to be terminated w.e.f. 10/11/1983. Pursuant to the said termination order, the petitioner raised industrial dispute before the Labour Court, Anand, which was allowed by order dated 13/10/1992.

2.1 Feeling aggrieved by the said order of the Labour Court, the respondent Municipality preferred application being Special Civil Application No.643 of 1993 before this Court and by order dated 08/03/2000 this Court (Coram : Hon'ble Mr. Justice H. K. Rathod) dismissed the said Special Civil Application and confirmed the order of the Labour Court dated 13/10/1992.

2.2 Pursuant to the above order, the petitioner made several representations to the respondent Municipality which were not decided. As the respondent Municipality had refused to pay the arrears of salary to the petitioner on the basis of regular / permanent employee, the petitioner has preferred this petition before this Court.

3.0 Mr.B S Patel learned advocate for the respondent Municipality has contented that no juniors, as alleged by the petitioner, who were appointed subsequent to the petitioner, were regularized during the pendency of the reference of the petitioner and that they were made regularized only after the prior sanction of the Director of Municipalities.

3.1 Mr.Patel has further contended that the Labour Court had granted only continuity of service to the petitioner and no consequential benefits were awarded. Though the petitioner was reinstated in service in 1993 and worked till he retired in 1997, the petitioner never demanded the same and therefore no relief can be granted to the petitioner. Therefore, Mr.Patel has submitted that no writ can be issued against the respondent Municipality.

3.2 Mr.Patel has further contented that in view of the Full Bench decision of this Court in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union in Special Civil Application No.5746 of 1999 dated 09/07/2004, this Court cannot issue directions for the regularization of the services of the petitioner.

4.0 I have heard the learned advocates for the parties and have perused the documents on record. From the record it is clear that the Labour Court had directed the reinstatement of the petitioner with continuity of service along with back wages, which was also confirmed by this Court in its order dated 08/03/2000 in Special Civil Application No.643/1993. In page 6 of the aforesaid decision, the learned Single Judge has observed as under;

> "Considering the entire evidence available on record, the Labour Court has come to the conclusion that the termination order which has been passed by the petitioner Municipality against the workman is illegal and void ab initio and as a result thereto, the respondent workman is entitled to full back wages of the interim period with continuity of service."

In that view of the matter, it is clear that the petitioner has to be considered to be in continuous service for all purposes.

4.1 The contention raised by Mr.Patel that the Labour Court has not granted any consequential benefits to the petitioner is misconceived, in view of the fact that the demand of the petitioner had arisen only on 10/12/1985 when the petitioner was under the impression that employees who were junior to him were regularized. Therefore, at the relevant time, the petitioner could not have demanded the same.

4.2 The contention of Mr.Patel that after 1993, the petitioner had never demanded for the consequential benefits before the Municipality or before any other Court is also misconceived, inasmuch as till the issue was not finally decided by this Court, the petitioner could not have raised such a demand before any other forum. In the petition filed by the Municipality the petitioner could not have made such a prayer, since the issue was sub judice. There was no demand between 1993 1997, as the petitioner could demand it only after the issue was decided by the competent authority. Therefore, when the issue was decided, the petitioner raised the demand before the respondent Municipality.

4.3 From the Full Bench decision relied upon by Mr.Patel it is clear that juniors were promoted in 1985 and that it was against the sanctioned posts. Therefore, keeping in mind the principle of "Last Come First Go",

the senior person is to be made regular / permanent first. In the present case, the petitioner is admittedly the senior person. Therefore, when the Labour Court has granted continuity of service to the petitioner which was confirmed by this Court, the petitioner has to be treated to be in service and will also be entitled for the benefits of continuity of service.

5.0 In that view of the matter, the petition is allowed. The respondent Municipality is directed to treat the petitioner as a permanent employee and to give him all consequential benefits as if he was a regular / permanent employee from the date on which his juniors were made regular / permanent.

5.1 Mr.Soni for the petitioner has requested that appropriate direction may be issued to the respondent Municipality for the payment of dues of the petitioner within a stipulated period, since the petitioner was a Senior Citizen. As per its policy, the Government will sanction the dues of the petitioner, as expeditiously as possible, and preferably within a period of six months from the date of receipt of recommendation from the respondent Municipality. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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